

A-76 QUESTIONS AND ANSWERS

1. Why and how was my function selected for A-76?

The Federal Activities Inventory Reform (FAIR) Act of 1998 requires Federal agencies, on an annual basis, to prepare and submit inventories of their commercial activities performed by Federal employees to the Office of Management and Budget (OMB). The OMB issued performance measures for FY 2002 that required agencies to complete public-private sector competitions or direct conversions on not less than 5% of FTE listed in their FAIR Act inventories. As part of NOAA's effort to reach the OMB competition goal, NOAA management determines which A-76 studies will be conducted to determine if it is most economical to continue in-house operations by government employees or convert it to a contractor operation.

2. What happens if the private sector wins the bid for my function?

If a contractor wins the bid, NOAA will exert maximum effort to find available positions for employees adversely affected by a conversion decision. Every effort will be made to place employees in other jobs within their own geographic area as a first option. If that is not possible, placement efforts will be made to offer placements in NOAA jobs in other geographic locations. As a last resort, if neither of these options is possible, a workforce reduction may be necessary through Reduction in Force (RIF). Additionally, affected employees have the Right of First Refusal for jobs with the successful contractor. See Question 3 for more information on Right of First Refusal.

3. If private sector wins the bid, do I get priority consideration for employment with that firm, and if so, how does that work?

As stated in Question 2 above, every effort will be made to place affected employees. However, if employees are identified for release from their competitive level as a direct result of a decision to convert to contract, a RIF may be necessary. Affected employees may be in the function converted to contract or employees outside the function who get displaced through RIF also may be affected. If the contractor has vacancies and the displaced employees are qualified, they have the Right of First Refusal. The Right of First Refusal does not guarantee employment by the contractor. The contract clause "Right of First Refusal of Employment" is from the Federal Acquisition Regulation (FAR) 52.207-3. The language is provided below from the FAR website. <http://www.arnet.gov/far/loadmain52.html>.

“52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause: Right of First Refusal of Employment (Nov 1991)

(a) The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards. (b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract. (c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins.”

4. If I go to work for a winning private sector company, what happens to my TSP, my benefits, and how is my salary determined?

You are eligible to withdraw your Thrift Savings Plan (TSP) account when you separate from Federal service for 31 or more full calendar days. You can have the TSP transfer all or part of a single payment or, in some cases, a series of monthly payments, to an IRA or other eligible retirement plan. If you do not want to withdraw your account when you leave Federal service, you can leave your entire account balance in the TSP. You may withdraw your entire balance or elect a series of monthly payments and be subject to an early withdrawal penalty tax on all direct payments you receive before age 59 ½. You must however, withdraw your entire balance in a single payment or begin receiving monthly payments from the TSP or from the TSP annuity vendor by April 1 of the year following the year you turn 70½. For more information, visit the TSP website at www.tsp.gov

You may be eligible for temporary continuation of coverage (TCC) when your coverage under Federal Employees Health Benefits (FEHB) ends due to separation from Federal service. TCC is a feature of the FEHB Program that allows certain people to temporarily continue their FEHB coverage after regular coverage ends after 31 days of separation. Coverage can continue for up to 18 months beginning on the 32nd day. If you choose TCC, you will pay the employee and government shares plus a 2% handling fee. At the end of TCC, you will need to make alternate arrangements for health insurance. For more information about FEHB, visit OPM’s website at www.opm.gov/insure/health/index.htm

Your Basic insurance under the Federal Employees Group Life Insurance (FEGLI) stops at the end of the day on which you are separated from service for any reason. When your group life insurance terminates, you are entitled to convert to an individual policy. Under the conversion privilege, you may convert all or any part of your Basic and Optional insurance to an individual policy. No medical examination is required. For more information about FEGLI, visit OPM’s website at www.opm.gov/insure/

CSRS -When you separate from Federal service for at least 31 consecutive days, you may file an application for a refund of your Civil Service Retirement System (CSRS) retirement contributions. You may leave your contributions in the system and request a refund at a later date or if you have 5 or more years under the CSRS, you are eligible for a deferred annuity at age 62. For more information about CSRS, visit OPM's website at www.opm.gov/retire/html/library/csrs.asp.htm

FERS - You may apply for a refund of your retirement contributions if you have been separated from Federal service for at least 31 days. If you have more than 1 year of service, interest on the contributions will be part of the refund. For more information about FERS, visit OPM's website at www.opm.gov/retire/html/library/fers.asp.htm

Your pay may be affected by the location and technical nature of the work. These factors make it difficult to draw universal conclusions about the effects of A-76 decisions on affected federal employees' employment options, pay, and benefits.

5. If a contractor wins the bid for my function, when would that company actually start doing the work?

Time frames for start dates at the company would be determined by a Transition Plan and Memo of Understanding with the contractor which will be developed.

6. Will I be eligible for CTAP and ICTAP if I lose my job? Will I be eligible for early retirement?

You will be eligible for Career Transition Assistance Program (CTAP) if you receive a certificate of expected separation or other official certification issued by the agency indicating that the position is surplus, e.g. a notice of position abolishment, or a notice stating that you are eligible for discontinued service retirement, **OR** if you receive a specific RIF separation notice or notice of proposed removal for declining a directed reassignment or transfer of function outside of the local commuting area. To be eligible for special selection priority, you must meet all the following conditions: 1) you are a surplus or displaced employee (still on the agency rolls); 2) have a current performance rating of record of at least fully successful or equivalent; 3) apply for a vacancy that is at or below the grade level from which you may be or are being separated; 4) you are a surplus or displaced employee of (a) the operating unit in the local commuting area of the vacancy who have appropriate certification as to your status, (b) another Departmental operating unit in the local commuting area of the vacancy and have the appropriate certification as to your status, or (c) you are a displaced Commerce employee from another geographic area with appropriate certification as to your status.

You will be eligible for Interagency Career Transition Assistance Program (ICTAP) with another agency outside of the Department of Commerce if you receive a specific RIF separation notice or a notice of proposed removal for declining a directed reassignment or transfer of function outside

of the local commuting area. To be eligible for special selection priority, you must meet all the following conditions: 1) you are a displaced employee with a specific notice as stated above; 2) have a current (or last) performance rating of record of at least fully successful or equivalent; 3) apply for a vacancy that is at or below the grade level from which you have been or are being separated; 4) you occupy or were displaced from a position in the same local commuting area of the vacancy; and 5) you file an application for a specific vacancy within the time frames established by the agency, and provide proof of eligibility.

You may also be eligible for discontinued service retirement because of an involuntary separation if you meet the age and service requirements. Discontinued Service Retirement because of an Involuntary Separation is defined as follows: the term "involuntary separation" means any separation against the will and without the consent of the employee, other than "for cause" for misconduct or delinquency. The most common cause of an involuntary separation is RIF. Employees who decline reasonable offers of other positions are not eligible for discontinued service annuities. A "reasonable offer" is defined as the offer of another position in your agency and commuting area for which you are qualified and which is no more than two grades or pay levels below your current grade or pay level. The age and service requirements for employees in the Civil Service Retirement System are if you have at least 25 years of service, or you are at least age 50 and have as much as 20 years of service, you may retire voluntarily on an immediate annuity. (The annuity is reduced by 2 percent for each year you are under age 55.) At least 5 years of your service must be civilian service, and you must have been employed under the Civil Service Retirement System for at least 1 year out of the last 2 years preceding retirement. The same age and service requirements apply to employees in the Federal Employees Retirement System (FERS).

7. If the private sector takes over my function, will RIF procedures be used to abolish the current positions?

There may be use of RIF if the private sector or government wins the competition or if the implementation of the Most Efficient Organization (MEO), which is the government's bid to do the work of the function, involves abolishing positions. Most functions if retained in house will be smaller than the current organization after going through the study process. The downsizing in either case may be accomplished through a variety of ways, e.g., attrition, outplacement actions to other NOAA positions, RIF, voluntary or early retirement. The decision regarding which options are most feasible will depend on a number of factors. More information about RIF is available on OPM's website at www.opm.gov/rif/generalrifmenu.htm.

8. What will NOAA do to assist adversely affected employees? Will we be placed in vacant positions? Will we have career transition services available to us?

See Questions 2 and 6. The agency will conduct briefing sessions for surplus and displaced employees on the use of career transition services, eligibility requirements for selection priority under CTAP and ICTAP and how to apply for vacancies under CTAP and ICTAP.

Administrative leave will be authorized for employees who are facing separation to search the internet for jobs, work on resumes, attend placement workshops, and go on interviews.

9. Will we have Right of First Refusal? If so, does this mean that the contractor has to hire us? Will we be able to retain our pay if we work for the contractor?

See Question 3 for information about Right of First Refusal.

Regarding pay retention with the contractor, the contractor determines the structure of the organization and jobs needed to accomplish the work. Pay and benefits associated with the contract are also determined by the contractor.

10. If I am separated, am I entitled to severance pay, discontinued service retirement, ICTAP rights?

Employees who receive a notice of involuntary separation due to RIF will be entitled to severance pay (if you are not eligible to retire), discontinued service retirement (if you meet age and service requirements), and Interagency Career Transition Assistance Program ICTAP (see question 6).

11. If we lose positions, will we ever get them back?

Whether the work stays in house or is contracted out, the duration of the MEO which is the government's bid for the work, or the contract, is 5 years. At the end of that time, the work is once again put out for bid. During that time, no new positions can be added unless there is a major change in the amount or type of work that affects the activity.

12. At what point do we have to start working under the MEO?

Once a final cost comparison decision between the Government's in-house bid and the offer from the public sector or an Inter-Governmental Support Service Agreement (ISSA) is made, a tentative decision is made. There is a 30-day appeal period. After the appeal period ends, the successful bidder will begin implementing its operation using the Transition Plan or Memorandum of Understanding with the successful bidder. If the government is the successful bidder, the transition to the MEO begins at that time.

13. Can I lose my grade and pay if the MEO wins?

Yes, if the MEO describes positions at lower grades than currently exist, and your position is abolished, RIF procedures may allow you to be placed in a lower graded position. If this is the case, grade and pay retention regulations apply. Under these regulations, eligible employees may retain their grade for two years.

14. What is the duration of the contract for the contractor/organization which wins the bid?

The duration of the contract is five years.

15. If the MEO wins, can my function be studied again, and if so, how soon?

Your function will be coded as “E” which indicates that the function is retained in-house as a result of a cost comparison as part of the annual FAIR Act report to the OMB. The OMB Circular No. A-76 Revised Supplemental Handbook dated March 1996 states that a post-MEO Performance Review and inspection should be conducted typically following the end of the first full year of performance. The Performance Review and inspection confirms that the MEO has been implemented in accordance with the Transition Plan. If the in-house MEO has not been implemented as provided by the Transition Plan, the contracting officer will award the work to the next lowest offerer who participated in the cost comparison. Since the purpose of conducting cost comparisons is to determine the most economical method of performing the function and the MEO was determined to be the most economical method, it would be unlikely that the same function would be identified for cost-comparison study again.

16. Wouldn't it be inappropriate for contractors who might be potential bidders on this contract to be trying to gather information about our processes, procedures, and statistics before bids have been officially solicited?

Contractors who are potential bidders on a commercial function under study should not contact employees working in the functional area. However, in the event that you are contracted, please do not disclose any information about the operations of the functional area. Please refer the requestor to your supervisor, who will in turn refer the matter to the assigned contracting officer.

17. Why isn't my function considered Inherently Governmental?

For purposes of A-76 studies, Government positions are considered either Commercial Activities or “Inherently Governmental.” Commercial Activities are those that could be performed by a commercial source. Inherently Governmental activities are exempt from competitive sourcing. The determination of whether a particular function is Inherently Governmental rests on a number of factors. Basically, Inherently Governmental positions perform duties that are so intimately related to the public interest as to mandate performance by Federal employees. They include activities requiring either discretion of judgment in applying government authority or use of value judgment in making decisions for the Government.

18. Are there other government agencies that have contracted out their functions, and if yes, which ones? Can you provide information on how they are going? If they were contracted at one time and are not now, why was it taken back in-house?

To date, most A-76 competitions have occurred in the Department of Defense. Within that group, about three-fourths of the A-76 competitions have stayed in-house with the Government. Below is a March, 2001, report from the Department of Navy Strategic Sourcing Office.

Department of Navy Cost Comparisons:

- 205 in progress, 20,291 FTE
- 86 completed
- 79% Navy MEO selected
- 21% Contract offer selected

19. What background investigation or clearance will the contractor be required to have? Is that the same as a federal employee?

Contract employees are required to have background investigations if their contract is for longer than six months.

20. What is the NOAA plan for FY 2002 - 2007 for A-76 studies (percentages, number of positions, etc.)?

The NOAA senior management will provide the inventory required by the FAIR Act annually to the Department of Commerce. This information is provided to the OMB annually. The Department of Commerce FAIR Act Inventory for FY2001 can be viewed at the following website: <http://www.osc.doc.gov/oebam/fair/>

21. Can you provide any information on how the contractor benefits for companies that have won A-76 studies (i.e. at DOC) stack up against federal benefits?

The impact on employment, pay, and benefits of individual employees affected by A-76 studies varies depending upon factors such as the results of the competitions, the availability of other government jobs, and other individual factors, such as retirement eligibility. Pay may also be affected by the location and technical nature of the work. These factors make it difficult to draw universal conclusions about the effects of A-76 decisions on affected federal employees' employment options, pay, and benefits.

The Department of Defense analysis of three completed A-76 studies showed about half of the civilian government employees remained in federal service following the studies, either in the new or another government organization with similar pay and benefits. There were a relatively small number of involuntary separations. Further, employees that left government service and applied for positions with the contractors who won the competitions were hired. Pay and benefit minimums offered by contractors are set by law for various geographical areas, which resulted in

some employees making less than what they did as government employees and others making more. In many instances, former government employees who accepted employment with the contractors received a cash incentive to leave government service and federal retirement benefits. Contractor benefit packages also differed, but the types of benefits, such as health insurance, vacation time, and savings plans, appeared to be similar to what the government offers. Contractors indicated that they actively recruit displaced and retired workers because they do not usually have a readily available workforce in place to staff the new organization. They want to hire as many former government employees as possible because it gives them an experienced workforce and also lowers their recruiting, hiring and training costs compared to hiring an external workforce

22. If there are vacancies prior to the decision on the function remaining in house or being contracted out, how are you planning to handle this work? Will you hold vacancies open or fill on a temporary basis?

Ideally, vacancies occurring in the A-76 study area should be filled on a “temporary” basis. This may be done using a detail, temporary appointment, rotational assignment, or any other temporary method. However, each office will have to assess conditions in its area and make decisions regarding the best way to handle their individual circumstances for filling vacancies.

23. If the government retains the function but it is in another geographical location, will you offer the positions to current employees and pay to relocate them? Will placement efforts be made for employees who choose not to move at the current locations?

Positions located in another geographical location will be offered (possibly through Transfer of Function procedures) to current employees, and relocation expenses will be paid. For employees not identified for positions in the new location, placement opportunities will be dependent upon RIF procedures.